

The Judicial Consultation Co-ordinator
Office of the Lord Chief Justice
Royal Courts of Justice
Chichester Street
Belfast
BT1 3JF

20th August 2019

Dear Sir/ Madam

Media Access to Family Courts Pilot Scheme

The Information Commissioner, Elizabeth Denham, has responsibility for promoting and enforcing the EU General Data Protection Regulation (GDPR), the UK Data Protection Act 2018 (DPA 2018) and other information rights legislation. The Information Commissioner's Office (ICO) is pleased to respond to the Office of the Lord Chief Justice, regarding the consultation and the associated draft Memorandum of Understanding (MoU) on Media Access to Family Courts. It is proposed that pre-approved media representatives may attend and report on certain cases listed for hearing and judgment in the family courts.

As you are aware, the ICO does not have regulatory oversight where processing done in a judicial capacity, in accordance with Section 117 of the DPA 2018 and Article 55(3) of the GDPR. It is stated that the pilot scheme will operate under the 'judge's inherent jurisdiction'. Despite this, given the reference in para 2.19 of the consultation document to impact assessments being undertaken by the Department of Justice, we would recommend that a full Data Protection Impact Assessment be undertaken. We would also be happy to meet with the Office of the Lord Chief Justice to discuss this and any processing activities and data protection matters that may otherwise fall outwith our regulatory responsibilities.

Please note that media organisations *will* have obligations under the GDPR and the DPA 2018. Any processing undertaken by the media will fall within the regulatory remit of the ICO. The GDPR and the DPA 2018 do not prevent responsible journalism; in fact, the GDPR principles are flexible and capable of accommodating the media where it reports matters in a sensible and responsible way, and the DPA 2018 contains a wide exemption from most of the requirements of the GDPR when it is believed that there is a public interest to

report. However, it is important that where there are reporting restrictions or where there is a court order in place, that the media fully understand the extent of such restrictions. If the media are unclear about their responsibilities under the GDPR or any other legal obligation, they should seek independent legal advice. In this regard, please note that the heading prior to paras 16-20 of the MoU shows the content to be *Availability of Court lists and Judgments / Responsibilities for Data Protection* yet there is no explicit reference to Data Protection.

As you may be aware, the ICO prepared guidance for the media under the Data Protection Act 1998 entitled, 'Data Protection and Journalism: a guide for the media.' Under Section 124 of the DPA 2018, the ICO is required to produce a statutory code on data protection and journalism, which will replace our existing guidance once it is complete. The intention of this code is to provide journalists and media organisations with a helpful, practical toolkit to assist them in complying with their data protection obligations.

It is noted that this pilot may be further considered by the Department of Justice in drafting legislation to address the matters discussed in the consultation. As you may be aware, where legislative proposals are being developed, the organisation responsible for developing such provisions, has an obligation under Article 36(4) of the GDPR to consult directly with the ICO.

Yours sincerely



Caroline Mooney
Regional Manager
ICO – Northern Ireland